

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

SUPERIOR COURT DEPT.
DOCKET NO.

19-08288

**JOHN DOE 1, JOHN DOE 2, JOHN DOE 3,
JOHN DOE 4, JOHN DOE 5, JOHN DOE 6,
JOHN DOE 7, JOHN DOE 8, JOHN DOE 9,
JOHN DOE 10**, individually and on behalf of
all others similarly situated

Plaintiffs,

v.

CAROL MICI, Commissioner of the
Massachusetts Department of Correction;
PAMELA MacEACHERN, Superintendent of
MASAC at Plymouth; **THOMAS TURCO**,
Secretary of the Executive Office of Public
Safety and Security; **MASSACHUSETTS
DEPARTMENT OF CORRECTION;**
MONICA BHAREL, Commissioner of the
Department of Public Health; **MARYLOU
SUDDERS**, Secretary of Health and Human
Services; **DEPARTMENT OF PUBLIC
HEALTH.**

Defendants.

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MAR 14 2019

SUPERIOR COURT-CIVIL
MICHAEL JOSEPH DONOVAN
CLERK/MAGISTRATE

COMPLAINT

Introduction

1. Plaintiffs, John Does 1-10, are incarcerated in a prison operated by the Department of Correction (DOC) because they have been civilly committed under Massachusetts General Laws Chapter 123, Section 35 ("Section 35"). They have not been convicted or even charged with any crime, but are imprisoned solely because they need inpatient treatment for an alcohol or substance use disorder.

2. They bring this lawsuit on behalf of themselves and all other men civilly committed under Section 35 who are or will be held in a correctional facility.

3. Massachusetts is the only state that places people in prison for treatment of alcohol or substance use disorders. Other states recognize what public health experts know: these disorders are medical conditions for which people need treatment, not punishment.

4. While incarcerated, men committed under Section 35 experience appalling conditions of confinement and only minimal treatment. Correctional officers treat them like criminals, routinely humiliate them, refer to them as “junkies,” and make other degrading comments. Many, if not most, emerge from prison traumatized by the experience and even more vulnerable to relapse and overdose.

5. For more than 30 years, numerous government commissions and task forces have urged the Commonwealth to put an end to incarceration under Section 35. In 2015, Governor Baker’s Opioid Working Group recommended that the Commonwealth transfer responsibility for all Section 35 civil commitments from the DOC to the Executive Office of Health and Human Services, stating: “It is important that treatment occur in a clinical environment, not a correctional setting, especially for patients committed civilly under section 35 of chapter 123 of the General Laws.”¹ See also, Governor’s Special Advisory Panel on Forensic Mental Health, *Final Report* at 33 (1989), which concluded that “only individuals who are subjects of the criminal justice system” should be committed to prison under Section 35.

6. In 2016, the Legislature repealed the provision in Section 35 that allowed women to be committed to a correctional institution. When he announced the change, Governor Baker said, “Now, women with substance use disorder who are civilly committed for substance use

¹ <https://www.mass.gov/files/2017-08/recommendations-of-the-governors-opioid-working-group.pdf> (last accessed March 4, 2019)

disorder will not be sent to MCI Framingham and will get real treatment instead of jail time.”²

Secretary of Health and Human Services Sudders, echoed these remarks, stating “Drug misuse is not a crime. It’s an illness and we need to treat it as such . . . Since 1987 the Commonwealth has stated its commitment to ending this practice. Finally, the day has come.”³

7. That day has not come for men. Instead, in 2017, the Legislature amended Section 35 to increase the number of prison beds for men, authorizing civil commitment not only to MCI Bridgewater, but also to any other correctional facility designated by the DOC Commissioner.

8. More than two thousand men are committed to prisons under Section 35 every year. They are in prison only because the Defendants have chosen not to establish an adequate number of inpatient treatment beds in the community to meet the needs of men committed under Section 35.

9. Men placed in correctional facilities under Section 35 represent a cross-section of the population of people needing civil commitment. About one-third are committed for alcoholism and the rest for opioid or other substance use disorders.

10. As put simply by former governor Deval Patrick, “treating those with substance abuse as prisoners is wrong.”⁴ For at least three fundamental reasons, it is also unlawful.

11. The disparate treatment of men and women under Section 35 constitutes unlawful gender discrimination. Women committed under Section 35 must be sent to inpatient treatment facilities in the community even if the committing court finds that they need a secure facility. By

² <https://www.mass.gov/news/governor-baker-signs-legislation-ending-civil-commitments-at-mci-framingham-for-substance-use> (last accessed March 4, 2019)

³ See web.archive.org/web/20160209002502/http://www.mass.gov/governor/press-office/press-releases/fy2016/lt-gov-polito-opens-addictions-program-in-taunton.html (last accessed 1/14/19).

⁴ See <https://www.wbur.org/news/2014/02/20/patrick-criminal-justice> (last accessed March 4, 2019).

contrast, men go to prison when there are no other available Section 35 treatment beds, regardless of their actual security needs. In short, men are punished for their alcohol and substance use disorders while women “receive treatment, support, and recovery services in a dignified medical setting.”⁵

12. Confining men to a correctional institution because of their disease also constitutes unlawful disability discrimination. It is a vestige of past times when alcoholism and substance use disorders were seen as shameful, even criminal, moral failings. Even today there is a widespread belief that those with substance use disorders are morally weak, deserving of their fate, and less worthy of care than individuals with other medical conditions. By authorizing their commitment to prison, Section 35 subjects men to stigma and punishment instead of treatment, perpetuates unwarranted negative stereotypes, and reinforces the perception that they are second-class citizens.

13. Finally, civil commitment to prison under Section 35 violates the Plaintiffs’ fundamental right to due process of law under the U.S. and Massachusetts constitutions. Their unnecessary incarceration in prison, rather than in an appropriate treatment facility, represents a substantial departure from accepted professional judgment, practice, and standards. Their confinement in a traumatic and counter-therapeutic environment sabotages the possibility of recovery and bears no reasonable relation to the purpose of Section 35.

14. Plaintiffs seek a declaratory judgment that their incarceration under Section 35 violates their rights under the Massachusetts Declaration of Rights; G.L. c. 93 §§ 102 and 103; G.L. c. 231A, § 1; the U.S. Constitution; the ADA; and the Rehabilitation Act. They also seek a

⁵ See remarks of Lieutenant Governor Karen Polito on July 26, 2016 in <https://blog.mass.gov/governor/opioid-addiction/administration-expands-addiction-program-for-women-at-taunton-state-hospital> (last accessed March 4, 2019)

permanent injunction barring civil commitment of men to correctional facilities under Section 35.

PARTIES

15. Plaintiff John Doe 1 suffers from substance use disorder and is civilly committed to MASAC under Section 35.

16. Plaintiff John Doe 2 has an alcohol use disorder and is civilly committed to MASAC under Section 35.

17. Plaintiff John Doe 3 has an alcohol use disorder and is civilly committed to MASAC under Section 35.

18. Plaintiff John Doe 4 has an alcohol use disorder and is civilly committed to MASAC under Section 35.

19. Plaintiff John Doe 5 has a substance use disorder and is civilly committed to MASAC under Section 35.

20. Plaintiff John Doe 6 has an alcohol use disorder and is civilly committed to MASAC under Section 35.

21. Plaintiff John Doe 7 has a substance use disorder and is civilly committed to MASAC under Section 35.

22. Plaintiff John Doe 8 has a substance use disorder and is civilly committed to MASAC under Section 35.

23. Plaintiff John Doe 9 has a substance use disorder and is civilly committed to MASAC under Section 35.

24. Plaintiff John Doe 10 has a substance use disorder and is civilly committed to MASAC under Section 35

25. Defendant Thomas Turco is Secretary of the Executive Office of Public Safety and Security of the Commonwealth of Massachusetts (EOPSS). As such, he oversees the Department of Correction and all of its programs, including the Section 35 program at MASAC. *See* G.L. c. 6A, § 18. He maintains an office at 1 Ashburton Place, Boston, MA 02108. He is sued in his official capacity.

26. Defendant Marylou Sudders is Secretary of the Executive Office of Health and Human Services of the Commonwealth of Massachusetts (EOHHS). As such, she oversees all programs and policies of the Department of Public Health (DPH) and the Department of Mental Health (DMH), including Section 35 programs directly operated by DPH and DMH and other treatment programs for alcohol and substance use disorder administered by vendors funded and licensed by DPH. G.L. c. 6A, § 16. She maintains an office at 1 Ashburton Place, Boston, MA 02108. She is sued in her official capacity.

27. Defendant Carol Mici is the Commissioner of the Massachusetts Department of Correction. By statute, Defendant Mici is responsible for the administration of all correctional facilities in Massachusetts, including MASAC. *See* G.L. c. 124, § 1. Defendant Mici maintains an office at 50 Maple Street, Suite 3, Milford, Massachusetts 01757. She is sued in her official capacity.

28. Defendant Monica Bharel is the Commissioner of the Department of Public Health. By statute, she is required to “establish a comprehensive program for the treatment of drug dependent persons” that shall include provision for sufficient inpatient facilities for the treatment of individuals committed for substance use disorders. *See* G.L. c. 111E, § 5. Her address is 250 Washington Street, Boston, MA 02108. She is sued in her official capacity.

29. Defendant Pamela MacEachern is the Superintendent of MASAC at Plymouth. By statute, she is designated “responsible for the custody and control of all prisoners” at MASAC at Plymouth. G.L. c. 124, § 14. Under DOC policy, she is “ultimately responsible for the overall functioning of the institution.” 103 DOC 101.01 (October 2013). Defendant MacEachern maintains an office at MASAC at Plymouth, Myles Standish State Forest, One Bumps Pond Road, Plymouth, Massachusetts 02360. She is sued in her official capacity.

30. The Massachusetts Department of Correction is a state agency with responsibility for the care and custody of patients committed to MASAC or any other correctional facility under Section 35. It is located at 50 Maple Street, Suite 3, Milford, Massachusetts 01757.

31. The Massachusetts Department of Public is a state agency with responsibility for developing and administering programs for the treatment of individuals with alcohol and substance use disorders. *See* G.L. c. 111B and 111E.

FACTS

Statutory Framework for Civil Commitment in Massachusetts

32. Section 35 allows certain individuals, including family members and police officers, to petition a district or juvenile court for the civil commitment of a person whom the petitioner alleges is addicted to alcohol or a controlled substance, and who allegedly presents a risk of serious harm due to his or her addiction. Section 35 defines a substance use or alcohol use disorder as the “chronic or habitual” use of controlled substances or alcohol to the extent that “such use substantially injures the person’s health or substantially interferes with the person’s social or economic functioning . . . or . . . the person has lost the power of self-control over the use of” controlled substances or alcohol. G.L. c. 123 § 35.

33. If the court finds, after a hearing, that the person has an alcohol or substance use disorder and there is a likelihood of serious harm as a result, the court may order such person to be committed for a period not to exceed 90 days. Such commitments “shall be for the purpose of inpatient care for the treatment of an alcohol or substance use disorder in a facility licensed or approved by the department of public health or the department of mental health.” *Id.*

34. Section 35 requires DPH to make available to the court a roster of public and private facilities available for the care and treatment of alcohol and substance use disorders, together with the number of beds currently available and the level of security at each facility.

35. If DPH informs the court that there is no space available in a suitable DPH or DMH approved facility, or “if the court makes a specific finding that the only appropriate setting for treatment for the person is a secure facility,” then treatment for men and women diverges.

36. Section 35 formerly allowed women to be civilly committed to MCI-Framingham. In the wake of litigation challenging the civil commitment of women to MCI Framingham, Governor Baker proposed legislation prohibiting confinement of women to correctional facilities under Section 35. In 2016, the Legislature adopted the Governor’s proposal, amending Section 35 so that woman may now only be committed to facilities licensed or approved by DPH or DMH. They cannot be committed to a correctional institution even if there are no available DPH or DMH approved beds or they need a “secure facility.”

37. By contrast, in the case of male Section 35 patients, Section 35 provides that if no suitable facility approved by DPH is available, or if the court concludes the person needs to be in a “secure facility,” men can be sent to “the Massachusetts correctional institution at Bridgewater, or other such facility as designated by the commissioner of correction.”

38. The DOC no longer uses MCI Bridgewater to house men committed under Section 35. It moved MASAC from the Bridgewater campus to MCI Plymouth in 2017.

DPH's Mandate

39. Chapter 111E of the Massachusetts General Laws requires DPH to “prepare a comprehensive plan for the treatment in public, private, and federal facilities of drug dependent persons and persons in need of immediate assistance due to the use of a dependency related drug.” G.L. c. 111E, § 4; see also G.L. c. 111B, § 4 (making DPH responsible for establishing and coordinating alcoholism programs).

40. G.L. c. 111E, § 5, requires DPH to “establish a comprehensive program for the treatment of drug dependent persons” that shall include provision for inpatient facilities. It further mandates that DPH “shall provide sufficient treatment facilities, public or private, for the treatment of drug dependent persons committed or admitted pursuant to the provisions of this chapter.” G.L.c. 111E, § 6, directs DPH to “Plan, construct, establish, cause to be established and maintain such facilities as may be necessary or desirable for the conduct of its program.”

41. G.L. c. 111B, § 6, and G.L. c. 111E, § 7, provides that all treatment facilities for alcohol and substance use disorders must be licensed or approved by DPH and comply with DPH minimum standards established by DPH. These standards are set forth in 105 Code of Massachusetts Regulations (“CMR”) 164.001 *et seq.*.

42. A patient also has the right under G.L. c. 111E, § 18, to “consult privately with his attorney, receive visitors, and send and receive communications by mail, telephone and telegraph. Such communications shall not be censored or read without the consent of such patient.” See also G.L. c. 111B, § 11.

SECTION 35 FACILITIES

Facilities Available for Women

43. DPH and DMH license or approve various facilities for female Section 35 patients.
44. DPH contracts with High Point, a private vendor, to provide services for civilly committed women in the Women's Addiction Treatment Center (WATC) in New Bedford, with approximately 102 beds.
45. DPH also contracts with High Point to operate a secure Section 35 unit for women in the Lemuel Shattuck Hospital, with 32 beds. In addition, DMH runs a secure Section 35 program for women, the Women's Recovery from Addiction Program (WRAP) in Taunton State Hospital, with 45 beds.
46. The High Point programs are licensed or approved by DPH and must comply with DPH regulations. Among the rights guaranteed to patients under these regulations are freedom from physical and psychological abuse; freedom from strip searches and body cavity searches; freedom from coercion; and "treatment in a manner sensitive to individual needs and which promotes dignity and self-respect." 105 CMR § 164.079; 105 CMR 164.012(D)(3).
47. The WRAP program is also approved by DPH and must comply with the DPH regulations. See 104 CMR 27.18 (4).
48. WRAP patients also have the same legal and civil rights as patients in other DMH facilities, including the right to make and receive confidential telephone calls; the right to send and receive sealed, unopened, uncensored mail; and the right to receive visitors of the patient's own choosing daily and in private, at reasonable times. 104 CMR 27.13(6) and 27.18.

49. The WRAP program and the High Point facilities each have a Human Rights Officer who is responsible for ensuring that the rights of patients are protected.

50. Consistent with DPH regulations, all women committed under Section 35 to WRAP, WATC, or Shattuck are offered a minimum of four hours of daily treatment, including on Saturdays and Sundays and in the evenings.

51. Treatment includes individual and group counseling, family support and education, 12-step programs, trauma awareness, coping skills, and aftercare planning.

52. Patients are also provided programming on issues including relapse prevention, relationships, HIV awareness, domestic violence, nutrition, self-help, and recovery.

Section 35 facilities for Men

53. DPH has failed to establish, license, or approve sufficient inpatient treatment facilities for men committed under Section 35. As a result, almost most three-quarters of all men committed under Section 35 are placed in correctional facilities.

54. Although more men than women are committed under Section 35, DPH has licensed only one Section 35 facility for men, the 108-bed Men's Addiction Treatment Center (MATC), in Brockton. Neither DPH nor DMH has licensed or approved any secure facilities for male patients.

55. Men who cannot be accommodated in MATC, whether due to a lack of bed space or because they are found to require a secure facility, are sent to MASAC, a Department of Correction prison located in the Myles Standish State Forest in Plymouth, Massachusetts.

56. MASAC has a capacity of 251 beds. At any given time, there have been approximately 150 to 250 civilly-committed individuals incarcerated at MASAC. MASAC also houses a small number of convicted and sentenced prisoners.

57. MASAC patients represent a cross-section of all men committed under Section 35. The great majority are committed to MASAC only because there are not enough beds at MATC. Although the Order of Commitment form issued by the court when men are sent to MATC states that the only appropriate setting for treatment is a secure facility, very few men are actually sent to MASAC because the court has made a specific finding that they need to be in a secure facility.

58. The DOC has entered into a Memorandum of Understanding with the Hampden County Sheriff's Department to operate two Section 35 units in correctional facilities. The first is inside the Hampden County Jail and House of Correction in Ludlow and has approximately 50 beds. The Hampden Sheriff operates an additional unit in Springfield with 32 beds for men who have completed detox.

59. Under the Memorandum of Understanding, courts in western Massachusetts can send men directly to the Hampden County House of Correction under Section 35. DOC also can transfer men there from MASAC if it thinks they "represent an unwarranted risk of escape or assaultive behavior."

60. The MASAC superintendent retains ultimate responsibility for all Section 35 patients in Hampden county, and conducts the release reviews that are required by Section 35 beginning after the first 30 days.

61. G.L. c. 111E, § 7, provides that "no department, agency or institution of the commonwealth or any political subdivision thereof shall operate a facility without approval from the division pursuant to this section." See also, G.L. c. 111B, §§ 4, 6. Neither MASAC nor the Hampden House of Correction Section 35 units are approved by DPH.

Conditions and Treatment at MASAC.

62. From the moment of arrival, men committed to MASAC feel the sting of incarceration. After traveling shackled and handcuffed in a prison van, sometimes for several hours and often in the throes of withdrawal, they pass through high fencing topped with razor wire. The sight of the prison is for some the first time they realize they have been sent to DOC custody.

63. MASAC is dominated and controlled by correctional officers. This creates a pervasively oppressive environment that is punitive, humiliating, and detrimental to treatment.

64. Men who have been committed to both MATC and MASAC describe the difference as “night and day,” saying MATC is a treatment facility while MASAC is a prison.

65. In 2017, WBUR radio reported that MASAC employs 100 correctional officers and just 17 alcohol and substance use counselors. Although DOC has slightly increased the number of clinical staff since then, correctional officers still vastly outnumber treatment staff.

66. Corrections officers at MASAC do not, according to DOC records, receive specialized training in behavioral issues related to alcohol or substance use disorders. Rather, they are trained to handle sentenced prisoners, and for the most part their experience has been in other DOC prisons.

67. Guards frequently use abusive language, deriding patients as “junkies,” “addicts,” or, in more than one case, “retards.” One patient described an officer saying, “We should stop giving you Narcan, so you don’t come back.” Another said that an attorney visit was “the first time anyone has talked to me like a human being since I got here.” At a recent meeting of the Section 35 Commission established by the Legislature, a former patient testified that when

asked what had happened to a man who had hung himself, the officer replied, “Who cares? One less junkie to worry about.”

68. Guards also engage in unprofessional and counter-therapeutic behavior, such as discussing their own drinking and drug binges in clear earshot of detainees. One patient reported hearing a guard remark “My blood is all margaritas right now,” which made him long for alcohol rather than focusing on recovery.

69. Patients at MASAC are subject to essentially the same rules and procedures as prisoners at other correctional institutions. Indeed, patients who have served time in jail often say MASAC is worse than jail because there are more restrictions and less freedom.

70. Unlike at MATC, WATC, or WRAP, patients committed to MASAC are strip-searched on arrival by correctional officers. The guards order them to bend over naked and cough so they can inspect their oral and anal cavities. Strip searches are also performed at other times at the discretion of correctional staff.

71. Officers take all of their property and clothing when they arrive, sometimes even their reading glasses. They are given state-issued orange “scrubs” similar to those worn by prisoners, and later must wear state-issued khaki slacks and T-shirts, as well as state-issued undergarments, just as in other state prisons.

72. Each patient receives an ID card with a DOC identification number that labels him as an “inmate,” which he is required to wear at all times. One man reported, “I don’t know why I got an inmate number when I was just trying to get help.”

73. As in other prisons, four times a day, all MASAC patients are directed to “stand by the foot of your bed, fully clothed, refrain from talking, and remain standing” while officers perform a “stand-up count.”

74. All outgoing mail, including every letter sent to family, friends or employers, is stamped, “This correspondence is forwarded from a Massachusetts Correctional Institution. The contents may not have been evaluated and the Department of Correction is not responsible for the substance or content of the enclosed material.”

75. Every telephone call is preceded by a recording that identifies the patient as an inmate in a correctional facility. Except for calls to attorneys, all telephone calls are recorded and can be monitored and listened to by correctional staff.

76. Many men are too ashamed and humiliated to send letters or make calls because they don’t want their family or friends know they are in a correctional facility. This embarrassment can be a substantial barrier for patients trying to piece back their lives in the community.

77. The names of patients are available on a public website --Victim Information and Notification Everyday (Vinelink.com) -- where they are identified as “Offenders” and are assumed to have “victims.”

78. All MASAC patients receive a handbook that makes clear the primacy of security over treatment. It declares at the outset that the mission of MASAC is “to promote public safety.”

79. Eleven pages of rules and regulations follow such as, “you are not to argue with the inmates serving the food or attempt to select portions yourself.”

80. Just as in any other prison, correctional officers enforce the myriad rules governing every aspect of life – everything from not “disturbing the blanket” on one’s bed after 7 a.m. to when men may move between buildings. Patients routinely describe guards barking orders and making threats when the orders are not complied with quickly enough.

81. Guards can punish patients for disobedience or other behavior by placing them in solitary confinement. Until recently solitary confinement was in so-called “dry cells” that have no toilet or sink. Men had to wait for an officer to let them out so they could use the bathroom – and some described long wait times. One man reported that a guard told him, “If you pee on the floor, we’ll make you lick it up.”

82. Dry cells violate DPH regulations that apply to all correctional facilities. *See* 105 CMR 451.113 (“Each cell within which an individual may be locked for any part of a 24-hour day shall have a working toilet and working handwash sink with hot and cold running water.”).

83. MASAC policies say the solitary confinement or segregation cells are for men on a “mental health watch” or a “security watch.” But they are often used as punishment. DOC has rationalized placing patients on mental health watch for such things as refusal to answer questions, “unorganized thought process,” labile affect, and hearing voices.

84. Similarly, patients have been isolated in solitary confinement cells on “security watches” for minor infractions such as smoking a tobacco cigarette, refusing to answer questions, taking extra milk boxes from the chow hall, or “being disoriented and wandering around trying to go home.” One patient reported that he spent his first two or three days at MASAC in a dry cell while detoxing from heroin, in extremely hot temperatures. Another reported that he was isolated in a dry cell for about five days, during which time he had a seizure, because there was no bed for him in one of the dormitories.

85. DOC records indicate that hundreds of men are isolated in solitary at MASAC each year, sometimes for as long as nine straight days. Although the cells now have toilets and a sink, they are still used to punish and isolate patients.

86. The profound negative effects of solitary confinement are well-documented, and at a facility such as MASAC, can be significantly compounded by withdrawal symptoms and co-occurring mental illnesses, especially since patients in dry cells receive no treatment, which is the entire reason for their commitment.

87. This punishment is actually worse than solitary confinement in other DOC prisons, where prisoners may have books, writing materials, radios and other limited property and are entitled to one hour a day of outdoor recreation and regular showers.

88. Correctional officers at MASAC can also spray patients with chemical agent if prisoners refuse to leave their cell, or for other management reasons.

89. Correctional officers also threaten patients with being strapped spread-eagled to the bed if they act up.

90. MASAC patients who are seen as difficult to manage may be sent to the Massachusetts Treatment Center for Sexually Dangerous Persons where they are housed in the Minimum Privilege Unit alongside convicted sex offenders. This is particularly traumatic for those who have suffered sexual abuse. Since the beginning of 2018, DOC has transferred more than 20 men from MASAC to the Treatment Center.

91. The harm caused by the toxic prison environment at MASAC is exacerbated by the unsanitary conditions of confinement and the poor quality of treatment at MASAC.

92. After admission, MASAC patients are housed in the “C” unit, which is the medical wing of the prison, for a detoxification phase. Many describe this unit as filthy and stinking of the vomit, urine and excrement of patients in the throes of cold-turkey withdrawal, who are required to clean up their own bodily waste (though some of the most elderly or infirm may receive assistance, and sentenced inmates do some cleaning). This is confirmed by DPH

sanitation inspections that describe plumbing in poor repair, mold on the ceilings, scum on shower walls, a missing door on bathroom stall, and “generally dirty” conditions.⁶

93. Prisoners detoxing in the C unit receive only limited medication to prevent seizures and to ease the excruciating symptoms of opiate withdrawal such as nausea, vomiting, abdominal cramping, diarrhea, insomnia, muscle pains, anxiety, agitations, and sweating. By contrast, in MATC, WATC and WRAP, those withdrawing from opiates receive opiate substitution medications.

94. MASAC generally holds all patients in the C unit for only 2-3 days, regardless of whether they have completed detox. Many men report being discharged from the C unit while still sick and suffering from symptoms of withdrawal. Some have had to return to the C unit after suffering withdrawal-induced seizures despite having been “cleared” as medically stable. Others have reported withdrawal-induced hallucinations once being medically cleared from detox.

95. After the initial detox period, patients are placed in the A or B units. Seriously ill and elderly patients are frequently sent to the A and B units due to lack of space in the C unit.

96. Beyond the filth described in the C dormitory, patients describe the entire facility -- particularly the bathrooms -- as unclean. There is no cleaning staff beyond the inmate workers and the section 35 patients, who are paid only in extra snacks.

97. While DPH regulations require at least 4 hours of treatment programming every day, 105 CMR 164.133 (D)(2), MASAC patients are typically scheduled for only three hours of programs on weekdays, and maybe one or two hours on Saturdays. This is significantly less than at MATC where patients are offered at least four hours of programming every day,

⁶ See June 7, 2018 Report available at <https://www.mass.gov/files/documents/2018/08/13/451-18-masac-plymouth-report-7-2-18.pdf> (last accessed March 4, 2019)

including Saturdays and Sundays, and usually more. Further, the actual hours of treatment programming at MASAC frequently fall short even of what is scheduled because of correctional procedures. For example, “count” often takes longer than scheduled and regularly cuts into programming. Classes are often cancelled or cut short, at times without explanation, and without rescheduling or alternative programming.

98. The DPH licensed facilities, such as MATC, have a much higher ratio of staff to patient ratio than at MASAC. At MASAC, substance abuse counselors are stretched thin, with classes of over 20 patients depending on the census, and a discharge planning caseload of up to 18 patients per counselor. As a result, discharge planning at MASAC is superficial and ineffective.

99. Patients describe the clinical staff at MASAC as generally well-intentioned, but overworked and frustrated by all the ways correction officers and DOC policies interfere with effective treatment.

100. Contrary to the standard of care for treatment of opioid disorders, MASAC patients have historically had no access to medication-assisted treatment such as Suboxone or Methadone. However, in accordance with an amendment to G.L. c. 127, § 17B, MAT is supposed to become available at MASAC starting April 1, 2019. MAT is available at MATC and at all the Section 35 facilities for women.

101. Treatment at MASAC is further undermined by the lack of adequate mental health care. Patients who enter with serious mental illness report long delays in receiving psychiatric medication upon arrival at MASAC, or put them on different medications that have proved ineffective in the past. Thus, they are deprived of necessary medications at the very time when

their mental health is likely to be particularly fragile: when suddenly thrust into a prison environment, and going through withdrawal.

102. MASAC's status as a prison is further underscored by the presence of sentenced prisoners who serve meals to patients and clean parts of the facility, including housing unit bathrooms. This contact with sentenced prisoners contravenes Section 35's requirement that civil detainees in DOC custody "shall be housed and treated separately from persons currently serving a criminal sentence," as interpreted by *Devlin v. Comm.*, 83 Mass.App.Ct. 530, 534 (2013).

103. Other indignities, large and small, remind MASAC patients that they are actually prisoners, from the bars on the windows to guards shining flashlights in their eyes through the cell door windows (which patients are not allowed to cover) throughout the night.

The Impact of Incarceration under Section 35

104. From their first degrading strip search through the last prison "count," patients are treated as a security threat rather than as individuals with a chronic disease in need of treatment. They are reminded of their inferior status in every shouted order or degrading comment uttered by a CO. They are subjected to punishment that would be impermissible, indeed unthinkable, in a DPH-approved facility, such as strip searches and solitary confinement in cells without a toilet or sink, sometimes for days at a time.

105. Civil commitment to MASAC is profoundly stigmatizing. Patients experience a deep sense of shame, humiliation, and loss of dignity. They are intimidated by the harsh conditions of confinement, and do not understand why they are in prison if they have done nothing wrong. Their family and friends commonly believe they must have engaged in crime to end up in prison.

106. The World Health Organization has reported that substance use disorder is the most stigmatized medical conditions in the world, with alcoholism not far behind. Stigma is a serious obstacle to recovery. The stigma faced by MASAC patients because of their disease is compounded by the stigma caused by their confinement in a correctional institution.

107. Prison confinement of men civilly committed for alcohol and substance use disorders necessarily thwarts effective treatment. It severely undermines their self-image and introduces fear and confusion about the purpose of confinement. One patient said, “I feel like I’m an inmate, even though I’ve never done a crime.”

108. The harsh treatment by correctional staff, the regimentation, and the deprivations of daily life in MASAC create the antithesis of a therapeutic environment. Plaintiffs are guarded by officers they fear to antagonize rather than supervised by staff they trust. The myriad rules encourage gamesmanship, mistrust, and hostility rather than the openness and trust necessary for effective treatment.

109. MASAC patients view the entire experience as punitive rather than an opportunity to begin recovery. Many describe it as the worst experience of their life. Patients who may have been in a jail before can be retraumatized by their incarceration at MASAC. One man who had served time in a jail described MASAC as “the worst place he’s been. It feels like punishment not rehab.”

110. Family members who file Section 35 petitions are often horrified by MASAC, telling DOC officials that they would not have initiated the process if they had known their loved one would be sent to prison. They are desperate to get treatment for their loved ones, but feel betrayed by Section 35. They do not want their loved ones to be in a prison but that is all that is available under Section 35.

111. MASAC patients have high instances of self-harm. Between January 1, 2016 and April 6, 2018 there were twenty-eight incidents of self-harm at MASAC, including one suicide, while there was a total of only one instance of self-injurious behavior at WATC and MATC during that same time.

112. The shame of the “inmate” badge follows MASAC patients into the outside world. They are often ashamed to tell employers, friends, and loved ones where they are. They leave deeply traumatized by the experience and, in many cases, with ties to family, housing and employment frayed by the stigma of incarceration. Their shame and trauma directly undermines their chances at successfully remaining clean and sober.

113. Being committed to MASAC drives some men away from treatment, damaging relationships with therapists and family members who may have filed the petition.

114. DOC has long been aware that imprisoning civilly committed individuals is inconsistent not only with proper care and treatment, but also with the mission of the DOC. In 2006, the superintendent of MASAC declared, “The Department of Correction should not be in the business of treating addiction.”⁷

115. In 2009, DOC announced it was closing MASAC and that patients should be relocated to DPH facilities. The DOC spokesperson explained, “We feel that care for civilly committed males is a public health function.”⁸ But after officers protested because they feared losing their jobs, and DPH declared that it would not take responsibility for this population, DOC changed its mind, and MASAC remains open.

⁷ See Laura Crimaldi, “Bail prisons out of drug-detox biz.” Boston Herald, January 29, 2006

⁸ See Laura Crimaldi, “Guards fear prisons will close Massive budget cuts on horizon,” Boston Herald, September 11, 2009.

116. The Corrections Master Plan prepared by the Division of Capital Asset Management in 2011 observed that civil commitment to correctional facilities was unique to Massachusetts, and recommended that these individuals be treated in more appropriate non-correctional settings. It also pointed out that incarcerating patients at MASAC deprived the Commonwealth of reimbursements from Medicaid and Medicare, and that it reduced DOC's ability to provide treatment to sentenced prisoners.

117. DOC has also recognized that the presence of correctional officers is incompatible with a therapeutic environment. In 2017, DOC reorganized Bridgewater State Hospitals so that guards are no longer inside the Hospital, but merely patrol the perimeter and don't interact with patients.

118. The trauma of imprisonment contributes to difficulty adapting after release, including relapse and overdose. A 2017 DPH study found that opioid-related overdose deaths were 120 times higher for persons released from Massachusetts prisons and jails compared to the rest of the adult population. Overdoses soon after discharge from MASAC are common. One patient reported that a clinician announced at his group that 77% of patients use again on the first day after discharge. And in 2017, at least one MASAC patient died of an overdose within a few weeks of his release.

INDIVIDUAL PLAINTIFFS' ALLEGATIONS

John Doe 1

119. Plaintiff John Doe 1 is 24 years old and was civilly committed to MASAC by the Chelsea District Court on February 19, 2019. His mother filed the Section 35 petition because of his substance use disorder.

120. This is Mr. Doe's third civil commitment to MASAC.

121. The C-Unit at MASAC, where Mr. Doe was sent for detox, was filthy. The bathrooms smelled like a dirty, molding mop, and not all the cells had fire alarms. There were no real cleaners except for the sentenced prisoners.

122. In Mr. Doe's experience, the correctional officers do not care that patients need help and generally treat them like garbage. Mr. Doe is treated better than other patients because the officers know him from previous commitments, but he still feels like the officers are waiting for him and other patients to make mistakes..

123. Everything the patients do and receive depends on the correctional officers. When Mr. Doe was late for a meal, the officers refused to serve him food. The officers surrounded him after he left the dining hall, and tried to provoke Mr. Doe. It scared him.

124. Mr. Doe was sent to the "hole" for having tobacco, without any verbal or any conversation about what was happening. He was there for five days, with nothing to do and no treatment. The cell was monitored by video cameras so he had no privacy. Mr. Doe was strip searched and had to use the toilet in front of the cameras.

125. Mr. Doe feels that MASAC does not provide adequate substance use treatment. There are not enough classes and they are sometimes cancelled without anyone informing the patients of the reason.

126. Mr. Doe hasn't spoken to his mother since coming to MASAC because telephone calls are recorded and monitored by officers. His mother does not understand just how horrific MASAC is and how little it helps him.

John Doe 2

127. Plaintiff John Doe 2 was civilly committed to MASAC by the Lowell District Court on February 28th, 2019 due to his opioid use disorder.

128. His mother petitioned for his civil commitment, but he also knew he needed help and wanted to receive treatment before the birth of his daughter. He does not understand why he was taken to a prison instead of a treatment center.

129. During his detox, he was only given Motrin, although his withdrawal symptoms were excruciating.

130. He has heard corrections officers call patients names like “pussy,” “bitch,” “junkie,” and “crackhead,” and one officer told him “your mother is a whore.”

131. At MASAC he receives minimal programming. He wants to get better for his daughter, but he feels that MASAC is not helping him.

132. He has been incarcerated before, and says the he would rather be in jail than MASAC.

John Doe 3

133. Plaintiff John Doe 3 was civilly committed to MASAC by the Plymouth District Court on March 1st, 2019 because he suffers from alcohol use disorder.

134. Mr. Doe’s father filed the Section 35 petition. He and his father both believed that he would be sent to a treatment center, not shackled and brought to a prison.

135. Mr. Doe has never been civilly committed or incarcerated before, and has held a steady job at a roofing company for many years. He does not believe that it is possible to get better at MASAC, and does not understand why he is being treated like a criminal when he has done nothing wrong.

136. Mr. Doe has medical complications stemming from his alcohol use, and the medical staff was unprepared to treat him, giving him cold beef broth and calling it a “liquid diet”.

137. He was unable to make phone calls for an extended period of time, causing him to feel further isolated.

John Doe 4

138. Plaintiff John Doe 4 is 34 years old and was civilly committed to MASAC on February 25, 2019 by the Quincy District Court. He suffers from bipolar disorder, attention deficit/hyperactivity disorder, and anxiety.

139. His father petitioned for his civil commitment under Section 35 out of concern over his benzodiazepine and opiod use. Mr. Doe was told there was a bed for him at MATC, where he had previously been committed, so he agreed to the commitment. This is his eighth or ninth civil commitment.

140. Prior to this commitment, Mr. Doe managed his addiction with Suboxone, as prescribed by his doctor. Suboxone is not available at MASAC, so upon arriving at MASAC he began to withdraw from Suboxone cold turkey.

141. While detoxing in the C Dorm, Mr. Doe suffered from shakes, cold sweats, restless legs, an upset stomach, and insomnia.

142. C Dorm is filthy. The dirty bathrooms smell of urine and feces, and the sinks are often full of food. The stench of body odor in the air is strong, and Mr. Doe is concerned about the lack of sanitation around so many sick people. Additionally, for the past two weeks, there has been no toothpaste available apart from toothpaste sold on canteen. Thus, those who don’t have

a job at MASAC, and don't have outside financial support, could not brush their teeth for two weeks.

143. Mr. Doe was medically cleared from detox after two days, even though he was still experiencing withdrawal symptoms.

144. C Dorm houses disabled patients and those with serious health conditions. Mr. Doe has seen a blind man in C Dorm who has great trouble navigating the crowded ward. Staff refuse to help him get to med line, showers, and elsewhere. Other patients have to help this man. Mr. Doe has seen other patients too infirm to even move around without assistance. If they can't physically get themselves to programs, they don't get any treatment. There is no programming in C Dorm, so patients who can't leave independently just sit and watch TV all day.

145. Mr. Doe's programming consists of three one-hour classes Monday through Friday, and a one hour program on the weekend. Outside of these programs, Mr. Doe has only met with his counselor two times, with each meeting lasting less than ten minutes.

146. Mr. Doe feels that incarceration at MASAC makes his recovery harder. The environment makes him anxious. Because many of the correctional officers are verbally aggressive and threatening, he worries about which correctional officers will be on the next shift, and how to avoid the worst of them.

147. The stigma Mr. Doe feels from being at MASAC is a lot like the shame he felt when he was previously a prisoner in county jail. Commitment to MASAC is like doing a small sentence.

John Doe 5

148. Plaintiff John Doe 5 is 24 years old and was civilly committed to MASAC by the Brockton District Court on March 4th, 2019. His mother filed the Section 35 petition after he suffered a relapse of his substance use disorder.

149. Mr. Doe's mother believed that he would go to MATC or another treatment center. He does not know why he ended up at MASAC and not MATC.

150. Mr. Doe was committed to MASAC once before in 2014 when it was at Bridgewater. Almost immediately after his release, he overdosed on heroin.

151. Mr. Doe has also been committed several times to MATC. Treatment programs at MATC were very helpful to him because the counselors cared about the patients and knew how to get to the core of how to battle addiction.

152. The constant presence, threats, and attitude of the correctional officers makes the environment at MASAC unhealthy and counter-therapeutic.

153. The officer who took his "Inmate" ID picture, instead of using the phrase "say cheese," told him to say "I'm a jackass." Another officer once came into his cell when he was upset and said, "If anything is damaged, I'm fucking dragging you out of here" to a solitary confinement cell.

154. Mr. Doe did not meet with his assigned counselor until he had been at MASAC for about 8 days. The treatment programs last only three hours every day and are superficial and unhelpful. Because there is so much down time, patients talk constantly about shooting up and getting high.

155. MASAC has caused Mr. Doe to feel worse about himself and made him want to use drugs even more than when he was on the street. At times he has thoughts about harming

himself. He feels institutionalized and unable to manage his life. He worries he will leave MASAC worse off than when he came in.

John Doe 6

156. Plaintiff John Doe 6 is 23 years old and was civilly committed to MASAC on March 1, 2019 by the Lawrence District Court. He suffers from bipolar disorder and attention deficit/hyperactivity disorder, and is on the Asperger's spectrum.

157. His mother petitioned for his commitment under Section 35 out of concern over his substance use.

158. Mr. Doe has never been to jail before, nor has he ever been arrested or charged with a crime.

159. This is the first time he has been civilly committed. When he was committed, he thought he was going to a treatment center, and does not understand why he instead ended up in a prison.

160. When he arrived at MASAC, he was ordered to strip naked, and bend over and cough in front of three correctional officers. This was the first time he was ever strip searched, and having correctional officers view his genitals made him feel extremely violated.

161. The day after he arrived at MASAC, Mr. Doe had a panic attack. He was crying, confused, and his mind was racing. He wanted to call his mother, but was denied. He asked to speak to a mental health clinician, and but was instead stripped searched in the hallway and made to put on a "turtle suit," a smock that covered his genitals, and placed in a solitary confinement cell.

162. In this cell, he was not allowed to have any bedding, except for a "security blanket." Even the blanket and mattress were eventually taken from him, and from then on he

was cold and made to sleep on the plastic bed frame. An officer stood outside his door, watching him at all times. These conditions made him suicidal, and he began banging his head against the cell wall.

163. After two days, he was taken to an office and told he was going to stay in solitary. Distraught, he tried to run, but was restrained on the floor by correctional officers who yelled that he was a "fucking idiot" and told him to "shut the fuck up." He was shackled at his waist and ankles, with his hands cuffed behind his back. He was put back in solitary and remained shackled for a long time. He was told if he acted up he would be restrained to the bed with his arms spread.

164. Mr. Doe remained in "the hole" under these conditions, 24 hours a day, for five days straight, receiving no mental health counselling or substance use disorder treatment.

165. MASAC is very dirty and Mr. Doe has found feces and urine on the toilets, and the bathrooms smell like this human waste. The showers are also very dirty, and the drains are clogged. The cells are also dirty and trash is everywhere.

166. The correctional officers dominate the environment MASAC. They bark commands aggressively, and Mr. Doe is scared to ask them for anything. He once tried asking a question of one, and was told "don't talk to the men in blue." Because of his Asperger's, it is hard for Mr. Doe to process the frequent yelling and cursing of correctional officers, and he gets confused.

167. Mr. Doe believes that because he is in DOC custody, his girlfriend now thinks he must have committed a crime.

168. Mr. Doe speaks to his mother and grandmother but does not feel comfortable talking about feelings and other personal matters because the calls are monitored and he does not want the DOC to know intimate details about his life.

169. MASAC has provided Mr. Doe with no meaningful treatment, has made him more depressed and anxious, decreased his self-esteem, and made him feel less than human. Rather than being on the road to recovery from substance use disorder, he will leave MASAC needing to recover from the experience itself.

John Doe 7

170. Plaintiff John Doe 7 was civilly committed to MASAC by the Wrentham District Court on February 22nd, 2019, due to his opioid use disorder.

171. Mr. Doe sought out the commitment himself. He wanted to get clean, particularly for his daughter, and thought that he would be sent to a treatment facility. He thought that he would be able to address his opioid use disorder in a therapeutic environment, and that this experience would give him the tools to finally stay clean.

172. Prior to his commitment, Mr. Doe was prescribed Suboxone, which he was forced to detox from upon arrival at MASAC. During detox, the patient in the bed next to him urinated and defecated on himself, and no one came to help him clean up.

173. Mr. Doe was placed on suicide watch in solitary confinement during his withdrawal, and was put in a "turtle suit," (an anti-suicide smock), held in a cell with blood on the walls, and given only "finger-foods" (i.e. foods that did not require utensils).

174. He has been to jail before, and he would prefer prison over MASAC. He states that the corrections officers treat the patients like animals rather than as human beings with a disease.

175. He believes that MASAC has been detrimental to his recovery process.

John Doe 8

176. Plaintiff John Doe 8 is 29 years old and was civilly committed to MASAC by the Roxbury District Court on March 6, 2019. His mother filed the Section 35 petition because of his alcohol use.

177. This is Mr. Doe's first civil commitment.

178. Mr. Doe has never been to jail or prison before, except for one night in a police holding cell in 2015. Before his commitment, Mr. Doe was working two jobs, as a personal trainer and a moving assistant. He lives with his parents and six younger siblings.

179. MASAC makes Mr. Doe feel like a criminal, even though he has not broken the law. He has an "Inmate ID" card, wears prison clothes, and his every move is controlled by corrections officers.

180. Mr. Doe thought civil commitment would be similar to a rehabilitation or treatment center, where he has checked himself in before. He did not know he would be sent to prison until he saw the barbed wire surrounding MASAC.

181. Mr. Doe feels that the MASAC environment is isolating and not therapeutic. The correctional officers are indifferent to the needs of the patients, and it seems like no one cares about them. Mr. Doe often has to ask four or five times for supplies. For example, it took a week for him to receive a thermal undershirt, even though the weather has been cold and snowy.

182. Mr. Doe was not assigned to a treatment class until his 7th day at MASAC, and there is very little to do at the dorms. At most, the patients get an hour a day of recreation time. There is not enough food, and the meals at MASAC are disgusting. .

183. Mr. Doe does not want to contact his workplaces because a call or letter from MASAC would identify him as a prisoner. He doesn't know if he will still have a job when he gets out.

184. Mr. Doe has not spoken to his family since coming to MASAC because he feels alienated from them. They have no idea what MASAC is like, and he is upset they sent him here instead of a normal rehabilitation center. MASAC is a prison, and does not make Mr. Doe feel open to receiving treatment.

John Doe 9

185. Plaintiff John Doe 9 is 35 years old and was civilly committed to MASAC by the Plymouth District Court on March 5th, 2019 because he suffers from alcohol use disorder.

186. Mr. Doe's mother filed the Section 35 petition. She thought he would be sent to a treatment facility, not a prison, and she does not feel he belongs in a prison.

187. Mr. Doe has never been to jail before. He doesn't know why he is in a prison and treated like an animal when he hasn't broken the law or done anything wrong. It is a humiliating and extremely distressing experience.

188. Mr. Doe has only been able to speak with his mother once in his eight days at MASAC. When they did speak, she heard a pre-recorded message indicating he was calling from a correctional institution and the same appeared on her caller ID. Their conversation was recorded, which felt like an invasion of privacy to Mr. Doe.

189. Mr. Doe suffers from medical conditions such as cirrhosis of the liver and esophagitis, neuropathy, an eye condition, and walks with a cane. Because of these health conditions, he is not permitted to walk to the buildings where treatment is offered; thus he has not been to groups, classes, or any other programming. He has only met with his treatment counselor once for approximately five minutes. These five minutes are the only treatment he's received at MASAC. Mr. Doe says MASAC is a lockdown and not a treatment facility.

John Doe 10

190. Plaintiff John Doe 10 is 34 years old and was civilly committed to MASAC by the Quincy District Court on March 6, 2019. His mother filed the Section 35 petition because of his substance use disorder.

191. This is Mr. Doe's first civil commitment.

192. Before his commitment, Mr. Doe was working as a commercial fisherman and living with his girlfriend and her two sons.

193. Mr. Doe is a veteran of the Marine Corps, where he served for five years and suffered serious physical injuries and Post Traumatic Stress Disorder. He developed a dependence on opioids after being prescribed Percocet for pain relief.

194. When Mr. Doe was committed, he did not know where he was going. He does not understand why he is a prisoner in a correctional institution, and labeled an "Inmate," when he was supposed to be sent to a treatment facility.

195. MASAC has worsened Mr. Doe's trauma and emotional problems. He feels ashamed and humiliated. He sleeps very little and has night sweats.

196. MASAC correctional officers belittle and talk down to patients. Mr. Doe has heard officers make abusive and threatening remarks, for example, calling one patient a "little

bitch." He has also seen people in solitary confinement, and heard one patient in "the hole" banging and screaming.

197. Mr. Doe did not start treatment until his 8th day at MASAC. He does not feel that MASAC is making him any better. He thinks that he is being "cage-trained," and that MASAC will set back his recovery.

198. Being in MASAC has cut Mr. Doe off from his loved ones and his employment. He does not want to call his employer, even though his employer is very understanding about substance use, because he does not want to have to explain why he is in a correctional facility.

CLASS ACTION ALLEGATIONS

199. This action is properly maintained as a class action pursuant to Rule 23 of the Massachusetts Rules of Civil Procedure.

200. The putative class is defined as: "All men who are now or will be placed in the custody of the Massachusetts Department of Correction based solely on a civil commitment under Massachusetts General Laws Chapter 123 Section 35."

201. The members of the class are so numerous that joinder of all members is impracticable. Over 2,000 men are admitted to correctional facilities every year.

202. Defendants have acted or failed to act in a manner that is generally applicable to each member of the putative class, making class-wide injunctive and declaratory relief appropriate and necessary.

203. The questions of law and fact raised by the named Plaintiffs are common to, and typical of, all members of the putative class. They include:

- a. Whether incarcerating men, but not women, who are civilly committed for treatment under Section 35 constitutes gender discrimination in violation of the U.S. and Massachusetts constitutions;
- b. Whether the civil commitment of men to a correctional institution under Section 35 impermissibly discriminates against them in violation of the Americans with Disabilities Act, M.G.L. c., 93 § 103, and Article 114 of the Massachusetts Constitution; and
- c. Whether the civil commitment of men to a correctional institution under Section 35 solely to treat them for the disease of alcohol or substance use disorder deprives these individuals of their right to due process of law under the Massachusetts and U.S. constitutions.

204. The legal violations alleged by the named Plaintiffs and the resultant harms are typical of those raised by each member of the putative class.

205. The named Plaintiffs will fairly and adequately protect the interests of the class. There is no conflict between the interests of the named Plaintiffs and the proposed class.

206. Plaintiffs' lawyers are competent and experienced in class action, disability, and complex civil rights litigation. They have committed sufficient resources to fully litigate this case through trial and any appeals.

CLAIMS FOR RELIEF

COUNT ONE

Gender Discrimination in Violation of the Massachusetts Declaration of Rights, the U.S. Constitution, and M.G.L. c. 93 § 102

207. Plaintiffs incorporate the preceding paragraphs of this Complaint as if fully set forth herein.

208. Section 35 authorizes commitment of men to a correctional facility if there are no beds available in a facility licensed or approved by DPH or DMH, or if the court determines that the man requires treatment in a secure facility.

209. Section 35 only authorizes commitment of women to a treatment facility licensed or approved by DPH or DMH. It does not authorize placement of women in correctional facilities under any circumstances.

210. Section 35's differential treatment of men and women is not narrowly tailored to further a compelling government interest. It therefore violates Article 1 of the Massachusetts Declaration of Rights, as amended by art. 106 of the Amendments, and G.L. c. 93, § 102.

211. The unequal treatment of men and women under Section 35 does not further important governmental objectives by means that are substantially related to the achievement of those objectives. There is no "exceedingly persuasive justification" for the discriminatory classification of men and women under Section 35. *Mississippi Univ. for Women v. Hogan*, 458 U.S. 718, 724 (1982). Therefore, the disparate treatment of men and women authorized by Section 35 violates the Equal Protection provisions of the Fourteenth Amendment to the United States, G.L. c. 93, § 102, and 42 U.S.C. § 1983.

COUNT TWO

Disability Discrimination in Violation of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, G.L. c. 93, § 103, and Article 114 of the Massachusetts Declaration of Rights

212. Plaintiffs incorporate the preceding paragraphs of this complaint as if fully set forth herein.

213. Title II of the ADA prohibits a "public entity" from discriminating against a "qualified individual with a disability . . . by reason of such disability." 42 U.S.C. § 12132.

214. Section 504 of the Rehabilitation Act, codified at 29 U.S.C. § 701 *et seq.*, states that "no qualified individual with a disability in the United States shall be excluded from, denied the benefits of, or be subjected to discrimination under" any program or activity that receives Federal financial assistance.

215. Plaintiffs, as individuals committed under Section 35 for alcohol or substance use disorder, are each a "qualified individual with a disability" under Title II of the ADA, as defined in 42 U.S.C. § 12131(2) and § 12102(1) and Section 504 of the Rehabilitation Act.

216. Defendants DOC and DPH are each a "public entity" under Title II of the ADA, as defined in 42 U.S.C. § 12131(1), and each receives Federal financial assistance.

217. Defendants have deliberately chosen to rely upon correctional facilities as a core component of the Section 35 treatment system instead of establishing sufficient inpatient treatment facilities in the community.

218. Section 35 reflects longstanding and ongoing prejudice and bias against individuals with alcohol and substance use disorders. No other individuals are confined to a correctional institution for treatment of a disease unless they are also charged or convicted of a crime. By authorizing Plaintiffs' commitment to prison, Section 35 perpetuates unwarranted negative assumptions about individuals with substance abuse disorders reinforces the perception that they are second-class citizens, and is *per se* discriminatory.

219. Section 35 conflicts with another important goal of the ADA - protecting individuals with disabilities from sacrificing the quality of everyday life in order to receive needed medical services. See also, *Olmstead v. L.C.*, 527 U.S. 581 (1999) (ADA prohibits "distinctions by which a class of disabled persons, or some within that class, are, by reason of

their disability and without adequate justification, exposed by a state entity to more onerous treatment than a comparison group in the provision of services”).

220. Plaintiffs are subject to strip searches, shackles and waist chains; their mail is read and their telephone calls are monitored and recorded; they are forced to endure solitary confinement in cells without toilets, harassment from correctional officers, and an overall atmosphere that is punitive and demeaning – all so that they can receive treatment that is inferior to what is provided at DPH licensed facilities. *See also* 28 CFR § 35.152(b)(2) (i) (prohibiting correctional facilities from assigning an inmate to a higher security level than would otherwise be appropriate.).

221. Title II of the ADA also prohibits the unjustified isolation and institutionalization of persons with disabilities, *see* 42 U.S.C. § 12132; *Olmstead*, 527 U.S. 581 (1999), and requires states and other public entities to “administer services, programs, and activities” in the most integrated setting appropriate to the needs of qualified individuals with disabilities.” 28 C.F.R. § 35.130(d). *See also* 28 CFR § 35.152(b)(2) (requiring that inmates with disabilities be housed “in the most integrated setting appropriate to the needs of the individual.”).

222. Defendants have discriminated against Plaintiffs by incarcerating them in a correctional facility instead of providing treatment in a more integrated and less institutionalized setting, namely a DPH-approved inpatient treatment facility.

223. Defendants have failed to make reasonable accommodations to their policies and practices to ensure that men are not civilly committed to correctional facilities under Section 35.

224. Plaintiffs could all be reasonably accommodated in DPH or DMH facilities without imposing an undue burden on any state agency or fundamentally altering the nature of its programs or services. It is more expensive to house civilly committed individuals in a

correctional facility than a public health facility with a similar level of treatment, because the intensive and costly security related services are not necessary in a public health facility.

225. The imprisonment of Plaintiffs and proposed class members under Section 35 subjects them to disability discrimination in violation of Title II of the ADA, Section 504 of the Rehabilitation Act, G.L. c. 93 § 103, and Art. 114 of the Massachusetts Declaration of Rights.

COUNT THREE

Violation of Substantive Due Process Provisions of the Massachusetts Declaration of Rights and the U.S. Constitution

226. Plaintiffs incorporate the preceding paragraphs of this Complaint as if fully set forth herein.

227. Plaintiffs' incarceration in a correctional institution is a massive curtailment of their liberty.

228. Plaintiffs' incarceration in a correctional institution is a substantial departure from accepted professional judgment, practice, or standards. No clinical or security professional makes the decision that a man committed under section 35 needs treatment in a correctional institution.

229. Plaintiffs' incarceration in a correctional institution is not reasonably related to the purposes of Section 35.

230. Plaintiffs' incarceration in a correctional institution is not the least burdensome or restrictive means to fulfill the treatment and protective purposes of Section 35.

231. The incarceration of the Plaintiffs and the proposed class members therefore violates the substantive due process provisions of the Fourteenth Amendment to the United States Constitution, 42 U.S.C. § 1983, and Art. 1, 10, and 12 of the Massachusetts Declaration of Rights.


PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court grant the following relief:

- a. Permanently enjoin the Defendants, their agents, officials, employees, and all persons acting in concert with them from placing the Plaintiffs, or any other men, in a correctional facility solely on the basis of their civil commitment under G.L. c. 123 § 35;
- b. Declare that incarcerating men committed solely under Section 35 constitutes gender discrimination in violation of the equal protection provisions of the Massachusetts Declaration of Rights, G.L. c. 93, § 102; and the United States Constitution;
- c. Declare that incarcerating men solely on the basis of their civil commitment under Section 35 violates the Americans with Disabilities Act, the Rehabilitation Act, G.L. c. 93 § 103, and Art. 114 of the Massachusetts Declaration of rights;
- d. Declare that incarcerating men solely on the basis of their civil commitment under Section 35 violates the due process provisions of the United States Constitution and the Massachusetts Declaration of Rights;
- e. Award Plaintiffs their reasonable attorneys' fees and costs; and
- f. Grant Plaintiffs such other and further relief as the Court considers just and proper.

Dated:

Respectfully submitted,


James R. Pingeon (BBO #541852)
Bonita P. Tenneriello (BBO #662132)
Alexander Sugerman-Brozan (BBO #650980)

Prisoners' Legal Services
50 Federal Street, 4th Floor
Boston, MA 02110
Telephone: (617) 482-2773
jpigeon@plsma.org
btenneriello@plsma.org
asugerman@plsma.org

Attorneys for Plaintiffs